THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, the 28th day of March,2007

W.P.No.9292 of 1998

Between:-

The Depot Manager,
APSRTC, Mahaboobnagar … Petitioner

and

The Labour Court-III, Hyderabad,
rep. by its Presiding Officer
and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.9292 of 1998

ORAL ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Award dated 25-7-1997 passed in I.D.No.135 of 1995 on the file of Labour Court-III, Hyderabad and to quash the same.

Petitioner is the Management and the 2nd respondent is the workman. Under the said Award, the 2nd respondent-workman was directed to be reinstated into service with all attendant benefits like continuity of service etc., but with 25% of back wages.

It appears, 2nd respondent-workman filed a claim petition under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') praying to set aside the removal Order passed by the Management on 24-2-1995. It appears, the workman absented from duty from 17-3-1994 to 6-4-1994 and from 13-4-1994 to 8-6-1994; therefore, he was issued with a charge sheet. The workman submitted his explanation to the said charge sheet. Since the explanation was not satisfactory, the Management ordered for a departmental enquiry. After conducting a detailed enquiry into the matter, the order of removal was passed on 24-2-1995. The Management filed a counter before the Labour Court stating that the workman was appointed as a temporary Sweeper on 3-7-1980 and thereafter recategorized as Cleaner. Since he was unauthorizedly absent, it resulted in improper maintenance of vehicles and loss of revenue of the Corporation. Thereafter, an enquiry was conducted and the workman was removed from service.

Before the Labour Court, no oral evidence was adduced by either side. But, on behalf of the Management, Exs.M1 to M17 were marked and on behalf of the workman, no documents were marked. After a detailed consideration of the evidence on record, the Labour Court came to the conclusion that the reports of the Mechanical Supervisor under Exs.M1 and M2, representation of the workman under Ex.M3, his explanation under Ex.M5 coupled with the statement of Mechanical Supervisor and the workman under Exs.M6 and M7 and in view of the findings of the Enquiry Officer under Ex.M10, it was made substantially clear that the workman was absent during the relevant period, though he claimed that the absence was due to sickness and furnished the medical certificate dated 7-5-1994 etc. It was further observed that the workman was prevented from attending duties due to the said illness and its possibility of recurrence in such cases cannot be ruled out. Though the Court held that the validity of the domestic enquiry is valid, still it could come to its independent conclusion regarding the proportionality of the quantum of punishment and thus felt that the punishment of removal from service is disproportionate to that of the misconduct proved and granted the relief as noticed above.

It is unfortunate that the Labour Court, in the absence of any evidence, recorded a finding that there is a possibility of sickness being recurred and the same is not ruled out. In the facts and circumstances of the case, I am of the opinion that though the workman is entitled for reinstatement with continuity of service, he is not entitled for any back wages. However during the pendency of the Writ Petition, in view of the interim order passed by this Court, the petitioner-management has already deposited half of the back wages awarded by the Labour Court and the same was permitted to be withdrawn by

the workman. In view of the above, the Award made by the Labour Court is modified to be read as under:

> "The impugned removal order passed by the Management is set aside. The Management is directed to reinstate the workman with continuity of service, with all attendant benefits like continuity of service etc., but with 12½% of back wages only."

With the above modification in the impugned Award, the Writ Petition is disposed of. No order as to costs.

28-3-2007

prk